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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,459	02/23/2004	Alan Charles Webb	626220510021	8229

7590 08/14/2006

H. Duane Switzer, Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114-1190

EXAMINER

FOOTLAND, LENARD A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**  
**After the Filing of an Appeal Brief**

Application No.

10/784,459

Examiner

Lenard A. Footland

Applicant(s)

WEBB ET AL.

Art Unit

3682

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

The reply filed 09 June 2006 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.  
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: AS EXPLAINED TO ATTY IN A COURTESY CALL SOME TIME AGO, THE EXAMINER'S POSITION IS THAT THE CITED PORTION OF LEMOINE THAT STATES THAT THERE NEED NOT BE THE SAME CLAIM REJECTED TWICE WAS AN ERRONEOUS INTERPRETATION OF THE STATUTE THAT WAS IN EFFECT OVERRULED BY THE SUBSEQUENT CLARIFYING RULE 41.31(A)(2), PROMULGATED 9-13-04, CLARIFYING THE STATUTE, AND REQUIRING THAT AT LEAST "ANY", (WHICH THE EXAMINER CONSIDERS TO MEAN "ANY ONE SAME") CLAIM REJECTED TWICE IS A PREREQUISITE FOR APPEAL. THE APPLICANT MAY PETITION OR APPEAL THIS DETERMINATION BY THE EXAMINER, AS HE FEELS BEST.



Lenard A. Footland  
Primary Examiner